

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 JOSH DONLEY,)
8 Plaintiff,) No. CV-10-5043-CI
9 v.) ORDER DENYING PLAINTIFF'S
10 KATHY DANIEL, SUSAN BRAIN, and) MOTIONS FOR RECONSIDERATION
11 THOMAS COOPER,) OF MOTION FOR APPOINTMENT OF
Defendants.) COUNSEL

BEFORE THE COURT are Plaintiff's Motions for Reconsideration of his Motion for Appointment of Counsel. (Ct. Rec. 60, 72.) Plaintiff is proceeding *pro se*; Benton County Prosecuting Attorney Jonathan J. Young represents Defendant Daniel; attorney Kenneth A. Miller represents Defendants Brain and Cooper. The parties have not consented to proceed before a magistrate judge.

Plaintiff renews his request for appointment of counsel, asserting that he is unable to afford counsel, his case is complex, and imprisonment will limit his ability to litigate because it requires research and investigation. He reiterates that he has limited access to the law library and limited knowledge of the law. He also re-asserts that his case will involve conflicting testimony and counsel would be able to better present evidence and examine witnesses. He includes as exhibits to his Motions evidence of his unsuccessful efforts to obtain counsel. (Ct. Rec. 60 at 4-11.)

As stated in the court's November 4, 2010, Order denying

1 Plaintiff's first Motion for Appointment of Counsel, the court has
2 jurisdiction to designate counsel only in "exceptional
3 circumstances." *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir.
4 1986). Whether exceptional circumstances exist requires this court
5 to evaluate the success of the complaint on the merits and the
6 ability of the claimant to articulate his claims *pro se* in light of
7 the complexity of the legal issues involved. *Id.* "Neither of these
8 factors is dispositive and both must be viewed together before
9 reaching a decision on request for counsel under section 1915 (d)." *Id.* (citations omitted). Plaintiff has exhibited an ability to
10 clearly and concisely articulate his claim of deliberate
11 indifference in this Complaint. He indicates he has pursued
12 numerous other claims in this court in which he proceeded *pro se*.
13 (Ct. Rec. 1, 6.) Further, the need for discovery and/or assistance
14 in examining witnesses to develop facts does not render his case
15 sufficiently "complex" to warrant appointment of counsel. *Wilborn*,
16 789 F.2d at 1331. Plaintiff has not demonstrated a likelihood of
17 success on the merits. Accordingly, Plaintiff's Motions for
18 Reconsideration of his Motion for Appointment of Counsel (Ct. Rec.
19 60, 72) are **DENIED**.

21 **IT IS SO ORDERED.** The District Court Executive is directed to
22 file this Order and provide a copy to Plaintiff at his address of
23 record and counsel for Defendants.

24 DATED January 25, 2011.

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S/ CYNTHIA IMBROGNO
UNITED STATES MAGISTRATE JUDGE

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